

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Haarstad, *et al.*

Examiner: Gilbert, Samuel G.

Serial No.: 10/675,815

Group Art Unit: 3735

Filing Date: September 30, 2003

Docket No.: P0010855.01

Title: METHODS AND APPARATUS PROVIDING SUCTION-ASSISTED TISSUE  
ENGAGEMENT THROUGH A MINIMALLY INVASIVE INCISION

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Attention: Office of Petitions  
**MS Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

A notice of allowance for the above-identified case was mailed 08/13/2008. The issue fee was thus due on November 13, 2008. Applicants unintentionally failed to make the issue fee payment by the due date of November 13, 2008.

**The entire delay in filing the required reply from the due date for the issue fee until the filing of this Petition under 37 C.F.R. § 1.137(b) was unintentional.**

This Petition is accompanied by the following items:

1. A copy of the Notice of Allowance and Fee(s) Due mailed on August 13, 2008;
- and

Serial No. 10/675,815.

Dkt.: P0010855.01

Filing Date: September 30, 2003

Title: METHODS AND APPARATUS PROVIDING SUCTION-ASSISTED TISSUE ENGAGEMENT  
THROUGH A MINIMALLY INVASIVE INCISION

2. A copy of the completed and executed PTOL-85 Fee Transmittal dated November 19, 2008;

Please charge the fee of \$1,620.00 due under 37 C.F.R. § 1.17(m), and any additional required fees, or credit any overpayment to Deposit Account No. 13-2546.

Respectfully submitted,

Date: November 21, 2008

By 

Jeffrey J. Hohenshell

Reg. No. 34,109

Sr. Patent Attorney

MEDTRONIC, INC.

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Minneapolis, MN 55432

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# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

## NOTICE OF ALLOWANCE AND FEE(S) DUE

AUG 12 2008

27581 7590 08/13/2008

MEDTRONIC, INC.  
710 MEDTRONIC PARKWAY NE  
MINNEAPOLIS, MN 55432-9924

EXAMINER	
GILBERT, SAMUEL G	
ART UNIT	PAPER NUMBER

3735

DATE MAILED: 08/13/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,815	09/30/2003	Philip J. Haarstad	P0010855.01	6667

TITLE OF INVENTION: METHODS AND APPARATUS PROVIDING SUCTION-ASSISTED TISSUE ENGAGEMENT THROUGH A MINIMALLY INVASIVE INCISION

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440	\$300	\$0	\$1740	11/13/2008

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

- A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.
- B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

- A. Pay TOTAL FEE(S) DUE shown above, or
- B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,815	09/30/2003	Philip J. Haarstad	P0010855.01	6667
27581	7590	08/13/2008	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3735	
DATE MAILED: 08/13/2008				

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 821 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 821 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/675,815	HAARSTAD ET AL.	
	Examiner	Art Unit	
	Samuel G. Gilbert	3735	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed on 6/25/2008.
2. ☒ The allowed claim(s) is/are 50-82.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>attached</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date <u>6/25/2008</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                    | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                    |
|   | 9. <input type="checkbox"/> Other _____  |

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/25/2008 has been entered.

##### ***Information Disclosure Statement***

The information disclosure statement filed 6/25/2008 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The lined through reference has not been considered and the initialed references have been considered.

#### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jeffrey Hohenshell on 6/4/2008.

The application has been amended as follows:

Claims 1-49 have been canceled.

Claim 50 - in lines 9 and 10, "the first incision to dispose the shaft body distal end within the body cavity or inserted through" has been deleted.

In the first paragraph of the specification in line 2, --now US Patent 7,338,434,-- has been inserted following "2003".

Claims 52, 57, 68 and 77 will be examined because they depend from an allowable claim.

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone

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Art Unit: 3735

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel G. Gilbert/  
Primary Examiner, Art Unit 3735



Receipt date: 06/25/2008

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<b>INFORMATION DISCLOSURE STATEMENT</b>	Atty. Docket No.: P0010855.01	Serial No.: 10/675,815
	Applicant(s): Haarstad et al	
	Filing Date: 09-30-2003	Group: 3735

## U.S. PATENT DOCUMENTS

[illegible]

# FOREIGN PATENT DOCUMENTS

[illegible]

OTHER DOCUMENTS (Including Authors, Title, Date, Pertinent Papers, etc.)

[illegible]

\*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Based on Form PTO-FB-A820  
(Also form PTO-1449)

Patent and Trademark Office, U.S. Department of Commerce

<b>Interview Summary</b>	Application No.	Applicant(s)	
	10/675,815	HAARSTAD ET AL.	
	Examiner	Art Unit	
	Samuel G. Gilbert	3735	

All participants (applicant, applicant's representative, PTO personnel):

(1) Samuel G. Gilbert. (3) \_\_\_\_\_

(2) Jeffrey Hohenshell. (4) \_\_\_\_\_

Date of Interview: 04 June 2008.

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.  
If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: 1-82.

Identification of prior art discussed: none.

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: permission was given to complete the attached examiner's amendment.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action. \_\_\_\_\_  
Examiner's signature, if required